

Internal Revenue Service  
**memorandum**

CC:TL-N-230-90  
Br4:RBWeinstock

date: JAN 08 1990

to: District Counsel, Greensboro CC:GBO

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

This is in response to your office's request for tax litigation advice in the above-captioned case.

Your office's request for tax litigation advice involves the question as to the taxability of amounts excluded by [REDACTED] and others as a parsonage allowance in light of the retroactive revocation of the tax exempt status of [REDACTED] (hereinafter [REDACTED]). Specifically, you ask whether the retroactive revocation of the tax exempt status of an organization affects the I.R.C. § 107 parsonage allowance exclusion claimed by taxpayers with respect to certain amounts received from that organization during these years.

OM 20144, [REDACTED] (July 21, 1988), concluded that an amount claimed as a parsonage allowance is part of compensation for purposes of determining whether unreasonable compensation was paid by the church. That memorandum also concluded that the portion of the rental value of a parsonage that represents unreasonable compensation is not excludable from the gross income of the receiving minister under I.R.C. § 107. Accordingly, a statutory notice of deficiency was issued to [REDACTED] disallowing only a portion of the parsonage received. In your request for tax litigation advice, you asked whether the Service may deny entirely the section 107 exclusion due to the retroactive revocation of [REDACTED] insofar as [REDACTED] was an insider and in part responsible for the activities for which [REDACTED]'s exemption was revoked.

I.R.C. § 107 provides in pertinent part that in the case of a minister of the gospel, gross income does not include (1) the rental value of a home furnished the minister as part of the minister's compensation or (2) the rental allowance paid a minister as part of compensation to the extent used to rent or provide a home. Treas. Reg. § 1.107-1(a) provides, in part, that in order to qualify for the exclusion, the home or rental allowance

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must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel. Treas. Reg § 1.107-1(b) provides, in part that the "rental allowance" means an amount paid to a minister for rent or otherwise provide a home if such amount is designated as rental allowance prior to January 1, 1958, "by the employing church or other qualified organization," or if such amount is designated as rental allowance pursuant to official action taken in advance of such payment "by the employing church or other qualified organization" when paid after December 31, 1957. The designation of an amount as rental allowance may be evidenced in an employer contract, in minutes of or in a resolution "by a church or other qualified organization" or in its budget, or in any other appropriate instrument evidencing such official action.

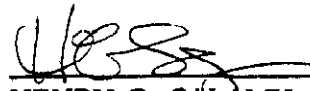
Your query focuses on whether the "employing church or other qualified organization," must be a tax-exempt organization under I.R.C. § 501(c)(3), and if so, whether the service should challenge amounts excluded as a parsonage allowance on the ground that there was no "employing church or other qualified organization" within the meaning of Treas. Reg. § 1.107-1(b) because of [REDACTED]'s retroactive revocation. You also suggest, as a separate ground to challenge the parsonage exclusion, that [REDACTED] was not a church for the relevant years.

We have coordinated your request with the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations) (CC:EE), and they have advised us that the employing church or other qualifying organization must be a tax-exempt organization under I.R.C. § 501(c)(3), and because of the retroactive revocation of [REDACTED], the taxpayers are not entitled to the exclusion under I.R.C. § 107. CC:EE provided these views informally to us, and they are in the process of drafting a formal response to our office which will provide a full discussion for the rationale. We will provide you with a copy of that response as soon as we have received it.

If you have any further questions, please do not hesitate to contact Ronald Weinstock at 566-3345.

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(Tax Litigation)

By:

  
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